

Appellant-defendant Steven Toby appeals his conviction for Possession of a Controlled Substance,¹ a class D felony, challenging the sufficiency of the evidence. Specifically, Toby claims that the State failed to demonstrate that he was in actual possession of Phentermine, a Schedule IV controlled substance, which was seized following a traffic stop. Concluding that the evidence was sufficient, we affirm.

FACTS

At approximately 10:00 p.m. on September 1, 2006, Brookville Police Officer Brian Bischoff was following a vehicle that was operating without its headlights turned on. At some point, the vehicle disregarded a stop sign. Officer Bischoff turned on his emergency lights as he rounded a turn. After the vehicle stopped, Toby exited the passenger side of the car holding a car seat containing an infant in his left hand. Officer Bischoff saw Toby reach his right hand into his pants pocket, remove a small item, and drop it on the ground. Toby then turned and began to rapidly walk away from Officer Bischoff's patrol car.

Officers Fred Neeley and Brent Campbell arrived at the scene and stopped their patrol car a short distance from Toby's vehicle. Officer Neeley then ordered Toby to return to the vehicle. As the officers followed Toby, they observed him veer from the sidewalk to an area just in front of the open passenger door, scuff his foot across the ground, and kick a small object. Thereafter, Toby walked around to the open passenger door.

¹ Ind. Code § 35-48-4-7.

Officer Neeley began inspecting the area where Toby had kicked the object and discovered what appeared to be the wrapper from a package of cigarettes on a small concrete area that connected the sidewalk to the curb near the vehicle's front tire. The packet appeared to be the same size as the object that Officer Bischoff saw Toby drop.

Officer Neeley opened the package and found two speckled pills that were subsequently identified as Phentermine, a controlled substance. When Officer Neeley pointed his flashlight at the object and told the other officers to look at what he had found, Toby said: "you SOBs you keep doing this to me again, those aren't mine." Tr. p. 68, 94-95. After continuing the search, the officers found no other objects in the area.

Toby was arrested and charged with possession of a class IV controlled substance, a class D felony. Following a jury trial that commenced on April 7, 2008, Toby was found guilty as charged and sentenced to a three-year term of incarceration with one year suspended to probation. He now appeals.

DISCUSSION AND DECISION

When addressing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of the witnesses. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). Rather, we consider only the probative evidence and reasonable inferences therefrom that support the verdict. Id. Conflicting evidence must be considered in the light most favorable to the trial court's ruling, and we will affirm the conviction unless no reasonable fact finder could find the elements of the crime proved beyond a reasonable doubt. Id. at 146-47. The evidence need not be so overwhelming as to overcome every reasonable hypothesis of innocence. Id. at 147.

To establish that Toby was guilty of the charged offense, the State had to prove that he knowingly or intentionally possessed Phentermine, a controlled substance, without a valid prescription. I.C. § 35-48-4-7(a). A person possesses a drug when he has the intent to, and is capable of, exercising dominion and control over the substance. Wilburn v. State, 442 N.E.2d 1098, 1101 (Ind. 1982). The State is not required to show that Toby was “caught red-handed” with the pills in his possession “at precisely the same time” that the police discovered the pills. Id. Rather, the State was only required to prove that Toby was knowingly or intentionally capable of maintaining dominion and control over the pills on the date identified in the charging information. Womack v. State, 738 N.E.2d 320, 324 (Ind. Ct. App. 2000).

Notwithstanding Toby’s claim that the State failed to demonstrate that he possessed the pills, the evidence established that Officer Bischoff observed Toby reach his hand into his front pants pocket, remove a small object, and drop it on the ground as he exited the vehicle. Tr. p. 23, 37-38, 45. Toby walked rapidly up the sidewalk away from Bischoff and returned only after Officers Neeley and Campbell ordered him to return to the vehicle. Officer Neeley then observed Toby leave the sidewalk and kick at something on the ground. Id. at 85-90. During an inspection of that area, Officer Neeley found a small, cellophane packet containing two pills that were subsequently identified as Phentermine. Id. at 28, 51-54, 91-92, 99-100, 103-04, 107. The packet was the same size as the object that Officer Bischoff saw Toby drop. The officers did not find any other objects in the vicinity, and although Toby stated “those aren’t mine,” id. at 68, 94-95, the

officers did not believe it was possible for Toby to have seen the packet that Officer Neeley was pointing to when he made that statement. Id. at 31, 95.

In our view, this evidence was more than sufficient for the jury to infer that Toby possessed the pills, knew the nature of the pills, and threw them to the ground as he attempted to flee the scene. Although Toby claims that the evidence equally supports the inference that the pills could have been possessed and thrown to the ground by the driver of the vehicle, his arguments constitute a request for us to reweigh the evidence, which we will not do. Thus, we conclude that the evidence was sufficient to support Toby's conviction for the charged offense. See Womack, 738 N.E.2d at 324 (finding sufficient evidence to support a conviction for actual possession of marijuana when it was established that the defendant threw an object to the ground as he fled from the police, a bag of marijuana was found in the same area, and evidence indicated that the bag had only been on the ground for a short time because it was covered in water droplets and no snowflakes despite that fact that snow was falling at the time).

The judgment of the trial court is affirmed.

NAJAM, J., and KIRSCH, J., concur.